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8 Attorneys for Plaintiffs,
9 UMG RECORDINGS, INC.; ARISTA
10 RECORDS LLC; LAFACE RECORDS
11 LLC; ZOMBA RECORDING LLC;
12 CAPITOL RECORDS, LLC; SONY BMG
13 MUSIC ENTERTAINMENT; and BMG
14 MUSIC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UMG RECORDINGS, INC., a Delaware
19 corporation; ARISTA RECORDS LLC, a
20 Delaware limited liability company; LAFACE
21 RECORDS LLC, a Delaware limited liability
22 company; ZOMBA RECORDING LLC, a
23 Delaware limited liability company; CAPITOL
24 RECORDS, LLC, a Delaware limited liability
25 company; SONY BMG MUSIC
26 ENTERTAINMENT, a Delaware general
27 partnership; and BMG MUSIC, a New York
28 general partnership,

Plaintiffs,

v.

ASHLEY NICOLE FREEMAN,

Defendant.

CASE NO. 3:08-CV-01192-WHA

**FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendant, Ashley Nicole Freeman, and venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400, because, on information and belief, the a substantial part of the acts of infringement complained of herein occurred in this District.

PARTIES

4. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

5. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

6. Plaintiff LaFace Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

7. Plaintiff ZOMBA RECORDING LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

8. Plaintiff Capitol Records, LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

9. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

10. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

11. Plaintiffs are informed and believe that Defendant is an individual who resided within this District at the time of the infringement complained of herein.

COUNT I

INFRINGEMENT OF COPYRIGHTS

12. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

13. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including but not limited to, all of the copyrighted sound recordings on Exhibit A to this Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights, for which the Plaintiffs are the owners as specified on Exhibit A.

14. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

15. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution systems. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to search for files (including audio recordings) stored on other users' computers and transfer exact copies of files from one computer to another via the Internet, which can include both downloading an exact copy of that file onto the user's own computer and distributing an exact copy of that file to other Internet users on the same P2P network. P2P networks enable users who otherwise would have no connection with, or knowledge of, each other to provide a sophisticated search mechanism by which users can locate these files for downloading and to reproduce and distribute files off of their personal computers.

16. Users of P2P networks who distribute files over a network can be identified by using Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files

1 for distribution can be captured by another user during a search or a file transfer. Users of P2P
2 networks can be identified by their IP addresses because each computer or network device (such as a
3 router) that connects to a P2P network must have a unique IP address within the Internet to deliver
4 files from one computer or network device to another. Two computers cannot effectively function if
5 they are connected to the Internet with the same IP address at the same time.

6 17. Plaintiffs identified an individual using LimeWire on the P2P network Gnutella at IP
7 address 128.12.195.5 on December 16, 2007 at 01:15:28 EST distributing 456 audio files over the
8 Internet. The Defendant was identified as the individual responsible for that IP address at that date
9 and time. Plaintiffs are informed and believe that as of December 16, 2007, Defendant, without the
10 permission or consent of Plaintiffs, had continuously used, and continued to use, a P2P network to
11 download and/or distribute to the public the Copyrighted Recordings. Exhibit A identifies the date
12 and time of capture and a list of Copyrighted Recordings that Defendant has, without the permission
13 or consent of Plaintiffs, downloaded and/or distributed to the public. Through Defendant's
14 continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted
15 Recordings, which acts Plaintiffs believe to have been ongoing for some time, Defendant has
16 violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute
17 infringement of Plaintiffs' copyrights and exclusive rights under copyright.

18 18. In addition to the sound recordings listed on Exhibit A, Plaintiffs are informed and
19 believe that Defendant has, without the permission or consent of Plaintiffs, continuously downloaded
20 and/or distributed to the public additional sound recordings owned by or exclusively licensed to
21 Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are
22 ongoing.

23 19. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
24 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
25 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
26 These published copies were widely available, and each of the published copies of the sound
27 recordings identified in Exhibit A was accessible by Defendant.

1 20. Plaintiffs are informed and believe that the foregoing acts of infringement have been
2 willful and intentional, in disregard of and indifference to the rights of Plaintiffs.

3 21. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
4 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for
5 Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to
6 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

7 22. The conduct of Defendant is causing and, unless enjoined and restrained by this
8 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
9 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
10 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
11 Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in
12 violation of Plaintiffs' exclusive rights.

13 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

14 1. For an injunction providing:

15 "Defendant shall be and hereby is enjoined from directly or indirectly
16 infringing Plaintiffs' rights under federal or state law in the
17 Copyrighted Recordings and any sound recording, whether now in
18 existence or later created, that is owned or controlled by Plaintiffs (or
19 any parent, subsidiary, or affiliate record label of Plaintiffs)
20 ("Plaintiffs' Recordings"), including without limitation by using the
21 Internet or any online media distribution system to reproduce (i.e.,
22 download) any of Plaintiffs' Recordings, to distribute (i.e., upload) any
23 of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings
24 available for distribution to the public, except pursuant to a lawful
25 license or with the express authority of Plaintiffs. Defendant also shall
26 destroy all copies of Plaintiffs' Recordings that Defendant has
27 downloaded onto any computer hard drive or server without Plaintiffs'
28 authorization and shall destroy all copies of those downloaded
recordings transferred onto any physical medium or device in
Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording
pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: June 10, 2008

HOLME ROBERTS & OWEN LLP

By



DAWNIELL ZAVALA
Attorney for Plaintiffs
UMG RECORDINGS, INC.; ARISTA
RECORDS LLC; LAFACE RECORDS LLC;
ZOMBA RECORDING LLC; CAPITOL
RECORDS, LLC; SONY BMG MUSIC
ENTERTAINMENT; and BMG MUSIC

EXHIBIT A**ASHLEY NICOLE FREEMAN****IP Address:** 128.12.195.5 2007-12-16 01:15:28 EST**CASE ID#** 151994098**P2P Network:** Gnutella**Total Audio Files:** 456

| <u>Copyright Owner</u> | <u>Artist</u> | <u>Recording Title</u> | <u>Album Title</u> | <u>SR#</u> |
|------------------------------|-----------------|--------------------------|-------------------------|------------|
| UMG Recordings, Inc. | Mya | You | Moodring | 338-694 |
| Arista Records LLC | Whitney Houston | Greatest Love of All | Whitney Houston | 60-716 |
| LaFace Records LLC | Usher | You Make Me Wanna | My Way | 257-730 |
| Zomba Recording LLC | Ciara | Oh | Goodies | 355-316 |
| Capitol Records, Inc. | Norah Jones | Seven Years | Come Away With Me | 320-120 |
| UMG Recordings, Inc. | 112 | U Already Know | U Already Know (single) | 369-648 |
| UMG Recordings, Inc. | LL Cool J | I Need Love | Bigger And Deffer | 83-510 |
| SONY BMG MUSIC ENTERTAINMENT | Mariah Carey | My All | Butterfly | 244-014 |
| BMG Music | SWV | You're Always On My Mind | It's About Time | 146-905 |